

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

PREMIUM BALLOON ACCESSORIES, INC.,)	
)	CASE NO. 1:10cv979
)	
Plaintiff,)	
)	JUDGE BENITA Y. PEARSON
v.)	
)	
CREATIVE BALLOONS MFG., INC.,)	
)	<u>MEMORANDUM OF OPINION AND</u>
Defendant.)	<u>ORDER</u> [Regarding ECF Nos. 84 ; 91]

Pending before the Court are Defendant Creative Balloon Manufacturing's ("CBM") Motion for Order that Actual Damages, Defendant's Profits and/or Attorney Fees are Not Available to Plaintiff Under 15 USC Section 1117 of the Lanham Act Given the Prior Findings by the Court ([ECF No. 84](#)) and Premium Balloon Accessories's ("PBA") Motion to Strike and/or Brief in Opposition ([ECF No. 91](#)). CBM has not replied.

The Court finds that CBM's motion has been brought out of rule. In response to PBA's Motion for a Conference/Hearing on the Issues of Damages and Attorneys' Fees ([ECF No. 66](#)), CBM filed an opposition brief ([ECF No. 67](#)) wherein CBM raised its objections to PBA's motion for a hearing. The Court overruled CBM's objections and granted PBA's motion for a hearing. [ECF No. 78](#).

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Therefore, the Court grants PBA's Motion to Strike ([ECF No. 91](#)) CBM's last-minute motion ([ECF No. 84](#)) to avoid the Hearing.¹

IT IS SO ORDERED.

March 25, 2013
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge

¹ On March 4, 2013, the Court granted PBA's Motion for Hearing ([ECF No. 66](#)) and scheduled the Hearing for March 25, 2013. [ECF No. 78](#). CBM filed its Motion for Order that Actual Damages, Defendant's Profits and/or Attorney Fees are Not Available to Plaintiff Under 15 USC Section 1117 of the Lanham Act Given the Prior Findings by the Court ([ECF No. 84](#)) on March 15, 2013.